



Inconsistency of Guarantee Norms on The Mudharabah Fatwas in Indonesia

Afif Noor¹; Dwi Wulandari²

¹ Faculty of Sharia and Law, Universitas Islam Negeri Walisongo, Indonesia

² Faculty of Humanities, Diponegoro University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i11.3039>

Abstract

The fatwa is the legal basis for Islamic banking in carrying out business activities as referred to in Article 26 paragraph 1 of the Sharia Banking Law. In providing a legal basis for Islamic banking activities, the Indonesian Council of Ulama issued fatwa 07/2000 and fatwa 105/2016. However, these two fatwas confuse the Islamic banking industry players and theoretically are problematic because there are conflicting norms in those two fatwas. The purpose of this study is to find and analyze the legal basis for the mudharabah fatwas of the Indonesian Council of Ulama number 07/2000 and number 105/2016 and analyze the difference in norms in the two fatwas from the perspective of Islamic law methodology (ushul al-fiqh). This type of research is explanatory normative juridical research using a conceptual approach and a statutory approach. Based on this research, it was found that the legal basis used in the determination of fatwa number 07/2000 has a weakness because it is based on weak Hadits so that it cannot be used as a legal basis for establishing a fatwa. In the perspective of ushul al-fiqh, changes in fatwas are allowed as long as they are aimed at realizing the benefit under Sharia objectives.

Keywords: *Islamic Banking; Fatwa; Mudharabah; Ushul al-Fiqh*

1. Introduction

Fatwa in the Islamic legal system is a formal legal opinion or interpretation given by a legal expert in response to a question from a particular person or institution. The fatwa involves two parties, namely the mufti (person or institution providing legal answers) and mustafti (person or institution requesting legal explanations or answers). The Efforts to provide legal explanations carried out by scholars who are experts in the field of law or legal institutions are called ifta. At the beginning of the development of Islamic law, fatwas were given by someone who was an expert in Islamic law (ulama), but in the present era, fatwas are given collectively through institutions or institutions consisting of several experts who are competent in their respective fields. Fatwa has a very important position in Islamic law as a tool to dynamic the law to suit the developments that occur and will continue to occur in human life, one of which is the emergence of Islamic economic activities, including Islamic banking whose operations are based on the Islamic law principles. Lahsasna (Lahsasna, 2018) explained that in the Islamic financial industry, including Islamic banking, fatwas have important roles as a means to resolve unclear issues, to ensure that the requirements of Islamic law are met as well as to meet the Sharia compliance in all Islamic banking activities, and to generate standards and resolutions when required.

In Indonesia, the Fatwa institution which is authorized by law to determine fatwas is the Indonesian Council of Ulama (ICU) or Indonesian Council of Scholar. The ICU is the only institution authorized to stipulate fatwas in the operation of Islamic banking as stated in Article 26 paragraph 2 of Law Number 21 of 2008 concerning Sharia Banking. As of August 2021, 138 fatwas have been issued by the ICU, most of which are fatwas related to Islamic banking (Indonesian Council of Ulama, 2021). Two of them are fatwa number 07/DSN-MUI/IV/2000 concerning Mudharabah Financing (hereinafter referred to as fatwa 07/2000) and fatwa number 105/DSN-MUI/X/2016 concerning Guaranteed Return of Financing Capital of Mudharabah, Musyarakah, and Wakalah Istitsmar bill (hereinafter referred to as fatwa 105/2016).

The fatwa 07/2000 is a fatwa that regulates financing based on mudharabah contracts. Mudharabah is a speculative partnership carried out by two parties in which one party gives a certain amount of money to the other party to trade with an agreement that the party who gives a certain amount of money gets a share of the profit. There are three pillars in the mudharabah contract (Abdulganiy, 2020), first, the form of a contract refers to an offer and acceptance that is expressed orally, in writing, or in other forms of communication that can be understood and accepted by both parties. Second, there are two parties who enter into the contract, namely the owner of the capital (Rabb al-Maal) and the labor provider (Mudharib). Third, the subject matter is capital, labor, and profit.

Mudharabah contract is one of the most frequently used contracts by Islamic banks in providing financing. Records from the Financial Services Authority (Financial Services Authority, 2021) in March 2021 show that the total mudharabah-based financing continues to increase every year. In 2018, mudharabah-based financing reached IDR 74.122 trillion. This figure is higher than in 2017 which was only IDR 67.049 trillion. In December 2019 total mudharabah-based financing experienced a fairly high increase reaching IDR 89.995 trillion. Meanwhile, in December 2020 during the COVID-19 pandemic, total mudharabah financing also continued to increase with total financing reaching IDR 96.376 trillion. These data indicate that mudharabah is a contract that is used as the basis for legal relations between customers and Islamic banking in carrying out productive financing.

The use of mudharabah contracts in Islamic banks is based on fatwa 07/2000. In the fatwa, among other things, it is stated that Islamic banks as capital owners can ask for material guarantees from labor providers who act as customers or third parties. In this fatwa it is emphasized that this guarantee can only be disbursed if the labor provider is proven to have violated the things agreed in the contract because basically in the mudharabah contract there is no compensation. In practice, at the time of the contract, Islamic banks always ask the labor provider to submit collateral (material wealth guarantee).

The provisions of the fatwa 07/2000 are different from fatwa number 105/2016. In this fatwa, the ICU stated that the owner of capital should not ask for a guaranteed return of capital from the labor provider. The labor provider is also not obliged to return the business capital in the event of a loss. However, the owner of the capital can ask a third party to guarantee the return of his capital.

This shows that there is an inconsistency of norm in the two fatwas of the ICU related to the mudharabah contract. This difference in norms can confuse Islamic banking actors and have no legal certainty. Inconsistency of norms must be avoided in the fatwa of Islamic banking because the fatwa of the ICU is a benchmark for Islamic banking in carrying out business activities and is binding and becomes the main basis for Islamic banking operations as a guarantee of the conformity of Islamic banking operations with the Islamic law principles mentioned in Islamic banking law. Therefore, the norms contained in a fatwa of the ICU should not conflict with other fatwas. This research is expected to bring up findings that are able to answer or resolve the problem of inconsistency of these norms so that the fatwa related to guarantees in the mudharabah contract is not confusing and can be used as a means to create benefits and legal certainty.

2. Literature Review

Fatwa Indonesian Council of Ulama is a non-binding set of rules for public life and there is no legal coercion for the target of issuing the fatwa to comply with the fatwa provisions. But on the other hand, based on Law Number 21 of 2008 concerning Islamic Banking, through certain patterns, the Financial Services Authority is required to make the contents of the ICU Fatwa absorbed and transformed into laws and regulations in formulating Sharia principles in the applicable Islamic finance sector including Islamic banking and bind society (Gayo, 2011).

Fatwa is a legal product that is not binding and is not a type of legislation in Indonesia. In Law number 12 of 2011 which was last amended by Law number 15 of 2019 concerning the Establishment of Legislation, a fatwa is not mentioned as a form of legislation. However, the fatwa applies and is binding on the Islamic financial services industry, including Islamic banking. This is stated in Article 26 paragraph 2 of the Law Sharia Banking that in carrying out Islamic banking, business activities must apply Sharia principles as decreed by the Indonesian Council of Ulama. This article confirms the existence of the ICU fatwa as an institution that stipulates fatwas on the Islamic financial services industry, thus the fatwa is very important legal product in the operation of Islamic financial services.

Fatwas in the study of Islamic law have a strong legal basis. At the beginning of Islam, the fatwa had been practiced by the Prophet Muhammad peace be upon him, which was proven by the questions asked by his companions. At that time, every question asked by the companions would be answered in two forms, through the revelation of Allah's verse or it could also come from the opinion of the Prophet Muhammad peace be upon him, which was called the Sunnah or Hadits.

However, in its current development, fatwas can only be carried out by institutions that have high credibility considering the qualities possessed by the scholar in the current era are different from the scholar in the early days of Islam. At present, the knowledge of scholars is limited to one particular scientific field, not as in the early days of Islam, where a scholar has comprehensive knowledge of scientific fields related to Islamic law. In Indonesia, only the ICU is authorized to stipulate fatwas (as emphasized by Article 26 paragraph 2 of the Law Sharia Banking). In carrying out its duties and functions as an institution authorized to stipulate a fatwa, ICU may not refuse when asked for a fatwa. Concerning the law with a fatwa, Imam an-Nawawi argues that (Amin, 2008);

1. The legal ruling is public obligations; for a person who has the ability or competence to give a fatwa, he is obliged to give a fatwa when a problem is brought to him;
2. If a fatwa has been issued but the fatwa is deemed inappropriate, the mufti must notify the mustafti that the fatwa previously issued is not appropriate. The scholars agree that if before the fatwa is tested for its appropriateness, mustafti has not been able to implement it, and it is forbidden for him to continue to carry out the fatwa because the mufti himself states that the fatwa is not appropriate. Likewise, if before the fatwa is tested for its appropriateness, but the Mustafti has carried out the fatwa, then it must be examined if the inappropriate fatwa is contrary to the certain text. Then if the fatwa is contradicted with particular text, then Mustafti must cancel the activities carried out based on the inappropriate fatwa;
3. It is forbidden for the mufti to be too easy to issue a fatwa. Likewise, if it is known that the mufti is easy to issue a fatwa, then it is forbidden to ask him for a fatwa. Such mufti may have considered in the category of making easy decision when there are negative hidden goals such as there is a tendency to look for reasons that can lighten the law by adhering to opinions that are close to doubtful so that the fatwa stipulated can be implemented by mustafti. In this regard, al Jauzi argues that the mufti's actions have a greater risk than the judge's actions, because what the mufti is doing is an action related to the law of Allah al-Mighty which is not only related to mustafti but also has a great influence on other people or society (Barlinti, 2010).

The fatwa in the Islamic financial services industry is a legal product that must be obeyed by the community, especially the Islamic financial industry players to create the benefit of the society. Fatwa must be implemented easily and not have multiple interpretations so that they are beneficial for the community. In terms of legal benefits, the community expects benefits in the implementation or enforcement of the law. Law is for humans, therefore the implementation and enforcement of the law must provide benefits or usability for the community. The implementation of law may not be taken for granted because the implemented law will create unrest within the community itself (Juwono, 2013). Based on this matters, the fatwa stipulated by the ICU must be able to provide legal certainty and benefits and not confuse the public. Certainty and expediency are things that must be realized by law. In the study of legal science, certainty and expediency are legal ideals (*idee des recht*) that must be realized proportionally to uphold justice.

3. Research Method

This research is a normative juridical research using a conceptual approach and statute approach. This type of research is explanatory research, namely explaining, strengthening, or testing the guarantee norms on the *mudharabah* fatwa in Indonesia issued by Indonesian Council of Ulama. The data used is secondary data originating from library research in the form of primary legal materials, namely norms or basic rules and legal doctrines and laws and regulations, secondary legal materials in the form of research results books, reports, articles in the mass media and the internet and tertiary legal materials that provide instructions and explanations for primary and secondary legal materials. The data obtained were systematized and processed for in-depth analysis using descriptive analysis.

4. Results and Discussion

Based on Article 29 of the 1945 Constitution, Indonesia is a religious country that respects the rights of religious adherents to carry out the religious laws they believe in. Based on this assumption, Muslims have a strong constitutional basis for carrying out Islamic law. At the implementation level as a form of recognition of Islamic law, Islamic legal norms can be a source of law in determining national law. It is a constitutional matter when the government enacts Law number 21 of 2008 concerning Sharia Banking. Through this law, Muslims can carry out their economic activities, especially in the banking sector in accordance with Islamic law or the legal provisions stipulated in Sharia (Qur'an and Hadits).

The institutionalization of fatwas as the basis for Islamic banking business activities is one manifestation of the implementation of Article 29 of the 1945 Constitution. Fatwa in the perspective of Islamic law methodology (*ushul al-fiqh*) is one form of legal determination. The term fatwa is actually a term intended to refer to the legal product of an activity in order to provide a legal explanation. In the study of linguistics, fatwa is derived from the word "أفتي" which means providing legal explanations, legal opinions or legal answers .

In Islamic law fatwa has a very strong position, therefore, based on the language in the Qur'an, it can be found several words that have the same meaning as a fatwa, by using the Arabic term "يَسْتَفْتُونَكَ", among others in an-Nisa:176, al-Shaffaat verse 11 and Yusuf verse 46. These verses provide an explanation of the etymological meaning of fatwa which means a request for an explanation of a problem. In these verses, it can be seen that the fatwa specifically and factually answers the questions posed by the polytheists and Muslims to the Prophet Muhammad peace be upon him.

Ifta is part of the process of extracting the law called *ijtihad*. Therefore, a mufti must have the same qualifications as a person who explores the law called a *mujtahid*. *Mujtahid* must be experts in Islamic law and have good faith, moral competence, fairness, and staying away from immorality. In

addition, compliance with the requirements of a mujtahid that must exist in a mufti is reputation. His authority as a mufti depends on his reputation as a scholar. Fatwas issued by scholars who do not have a good reputation do not have strict sanctions. One is free to ask for a fatwa among scholars unless the government stipulates a person as the state mufti who is usually given the title Shaykh al-Islam (Schacht, 1996).

4.1. Legal Basis of the Mudharabah Fatwas

Fatwa is a legal product obtained through the process of *ijtihad* which is done by understanding the text or the arguments contained in the Qur'an and Hadits. Takim stated that *ijtihad* is the process of inferring religious orders from textual and non-textual sources including the search for certain laws based on hermeneutics and other forms of interpretation from authoritative sources of Islamic law (Takim, 2021). In addition, in the process of issuing or making laws with fatwas, a mufti also bases his opinion on the principles of Islamic jurisprudence or the opinions of scholars related to issues regulated in the law. Thus, it is impossible to determine the fatwa without examining the arguments, legal maxims, and the opinions of scholars regarding the issues being discussed. Based on this, there are several basic considerations or arguments used by the Indonesian Council of Ulama as a basis in determining the fatwa 07/2000: The Word of Allah al-Mighty in an-Nisa verse 29 which means: "O you who believe, do not eat your neighbor's property in a vanity way, except by buying and selling that applies with the same love between you. And do not kill yourselves; Verily Allah is Most Merciful to you" and al-Maidah verse 1 which means: "O you who believe, fulfill your contracts".

Meanwhile, the Hadits used as the basis for establishing the fatwa 07/2000, among others, is a Hadits that was narrated by Ibn Majah of Shuhaib which means: "Salih bin Shuhaib from his father he said, I heard Abu Said al-Khudri said, the Messenger of Allah had said: "There are three things that contain blessings: buying and selling not in cash, *muqaradhah* (*mudharabah*), and mixing wheat with barley for domestic use, not for sale". This Hadits is a weak one. In the structure of the narrators of this Hadits at the third and fourth levels, there are narrators named Abdurrahman bin Daud and Nasr bin Qasim. Scholar of Hadits argues that they are weak and very weak narrators. Ibn Asakir and Ibn Majjah put Nasr bin Qasim in the category of *matruk al-Hadits* (Hadits in which there is a narrator who is accused of lying). At the fourth level, there is also a narrator named Amr bin Bistham who according to al-Uqaily is categorized as an untrustworthy person. Therefore, the Hadits mentioned above are weak Hadits so that they cannot be used as the basis for determining the law. (Majlis Penulis Bersyari'ah, 2012).

Requesting guarantees from labor provider or third parties is something that cannot be justified. Mubarak argues that in a *mudharabah* contract three things must be considered: first, there is a delivery of goods from the owner of the capital to the fund manager; second, there are provisions regarding profit, that is profit is divided by percentage according to a contract; and third, there is a statement about losses, that is losses are only borne by the owners of capital and labor providers cannot be burdened with losses (Mubarak, 2004). If the owner of the capital imposes a guarantee and makes it one of the clauses or conditions of the contract, then the cooperation contract using the *mudharabah* contract is null and void (Rusyd, no year). Thus, the loss in the *mudharabah* contract can only be borne by the owner of the capital as the owner of the funds and not to the labor provider who manages the funds, because it is very impossible in capital management, that the labor provider takes actions that can result in losses so that they cannot get a share of the profits.

In this case, according to Syahdeini, one of the subjective principles in the *mudharabah* contract is that the owner of the capital cannot ask for a guarantee from the labor provider to withdraw the funds he has invested. Asking for guarantees from the labor provider in the *mudharabah* contract results in the agreement being null and void (Syahdeini, 1999). The prohibition of requesting guarantees from labor providers is based on the reason that the *mudharabah* contract applies the principle that both the owner

of capital and the provider of labor must bear the risk. The obligation to provide guarantees by labor providers to capital owners means that the only labor provider bears the risk in the event of a loss, while banks or other Islamic financial institutions will be free from losses because there are sources to cover losses from the sale of collateral that has been given by labor provider. This kind of thing does not show the principle of justice that must be upheld in running the Islamic economic system.

Meanwhile, in setting fatwa 105/2016, Indonesian Council of Ulama uses several legal bases namely;

1. The basis or legal basis derived from the Qur'an; an-Nisa verse 29, which means: "O you who believe, do not eat your neighbor's property by a vanity, except by the way of business that applies with equal love between you. And do not kill yourself; surely Allah is Most Merciful to you". The verse clearly prohibits consuming or taking advantage of property in a false manner, except by conducting business which is based on the willingness of both parties.
2. al-Maidah verse 1 which means; "O you who believe, fulfill the agreements".
3. The legal basis derived from the Hadits, namely the Hadits narrated by at-Tirmizi which means; "From Aisha, that a man bought a servant and used it. Then the buyer returned them because they were defective. He complained to the Prophet and returned to him. The seller said: 'O Messenger of Allah (Peace Be Upon Him): he has used my slave. The Messenger of Allah replied: the benefit (which a person gets) is because he bears the risk".

Based on a search of the degree of these Hadits, it was found that the Hadits narrated by Aisha, are Hadits whose degree is the weak Hadits (Muflihun.com, 2021). The weak Hadits cannot be used as a basis for establishing the law. The use of the weak Hadits in the fatwa shows the weakness or imperfectness of the fatwa stipulated by the ICU.

In fatwa 105/2016 explicitly ICU states that customers as fund managers are not required to return full business capital in the event of a loss and the capital owner may not ask the labor provider to guarantee the return of capital. Provisions in fatwa 105/2016 are different from the the fatwa 07/2000 which allows banks or other Islamic financial institutions to request collateral from the labor provider in the mudharabah contract. Even in the fatwa, there is a statement that the manager is not required to return business capital in full and the capital owner may not ask the labor provider to guarantee the return of capital.

4.2. Inconsistency of Fatwa Norms in the Perspective of Islamic Law Methodology (Ushul al-Fiqh)

The issuance of the fatwas 07/2000 and fatwa 105/2016 is the result of the collective ijtihad of the scholar who are members of the scholar council consisting of people who have expertise in their respective fields. However, the issuance of the two fatwas caused "confusion" for the community, especially Islamic economic actors because there were inconsistencies in the norms in them.

These different fatwas will cause confusion for the public, especially for Islamic financial institutions that want to run the perfect Islamic economic system. Al-Jauzi stated that the fatwa givers were not allowed to plunge the person who asked for the fatwa in confusion and doubt, but he should explain it with clear information and eliminate all doubts, the statement contained expressions that could be understood to reach the goal until the questioner did not need another fatwa provider (Al-Jauzi, 2000). The prohibition for the fatwa giver not to confuse the public is intended so that the legal product that has been stipulated has strong legitimacy, because even though the fatwa giver has recognized authority, if the fatwa issued causes controversy and even confuses the public, it will reduce its legitimacy as an institution that authorized to make laws. Moreover, in the context of the fatwa on Islamic economic activities, in this case the ICU fatwa is the main basis for carrying out economic activities. El-Gamal

stated that fatwas are the only way to determine the validity of Islamic financial transactions (El-Gamal, 2006). The validity of Islamic economic activities is determined by the fatwa that forms the basis for its implementation.

In the perspective of Islamic law methodology (*ushul al-fiqh*), basically the law can change and must be in accordance with the times. Allah Almighty deliberately stipulates laws that are not detailed, because if Islamic laws or laws contained in the Qur'an and Hadits are regulated in detail, they will lose their relevance to the dynamics of an ever-changing society. To realize this, the scholars agree that the law contained in the Qur'an and Hadits should not change unless it occurred during the time of the Prophet Muhammad peace upon him. While the law obtained through the process of *ijtihad* or understanding such as fatwas can change according to the conditions and circumstances that surround it in accordance with this legal maxim;

تغير الفتوى بتغير الزمان والمكان

This legal maxim written in Arabic above emphasis the rules that the basis for changes in fatwa or law is caused by different times and places. Imam Syafi'i practices this as evidenced by the existence of new opinion and old opinion for the results of his *ijtihad*. Thus changes to the law or fatwa is a necessity. To realize Islamic law is always appropriate and can be valid for all time, then Islamic law must be dynamic. Although Qur'an and Hadits are static but understanding of both can continue even though the time and social conditions of society change. Therefore, the principle of Islamic law is to realize a benefit in the world and the hereafter (Djamil, 1999). Based on the assumption that Fatwas can change due to changes in place, period and situation surrounding the case. Muhammad bin Umar mentioned that there are three things that can cause changes in fatwa (Bazmul, 1995); a) changes in fatwa is caused by differences in understanding person who does *ijtihad* (*mujtahid*), b) fatwa is changed because they take the real benefit into account, and c) changes to fatwa occur due to considering customs that occur in society.

Changes to the fatwa in the Islamic economic law case are very possible. Najmuddin at Thufi argues that for the achievement of benefit, freedom of human reason can determine benefit and prosperity in terms of *fiqh muamalah*. According to at-Thufi, four things can be used as a basis in studying and laying down the basics of public interest in Islamic jurisprudence. The four basic steps are (Fawaid, 2014), namely, the human mind can independently find something good and something bad, the benefit is the proposition outside the sacred text (Qur'an or Hadits), the objects of the use of benefits theory are transactional laws, and customary laws and the benefit is the strongest argument.

Meanwhile, in terms of changes in this fatwa, Qardhawi ruled out that there are different things that may cause changes in fatwa due to changes in human needs and changes in social, economic and political conditions (Qardhawi, 2008). However, these conditions must be justified. Changes in time, place and conversation can be understood, but changes in fatwa relating to intentions or motivation and deeper attention should not be allowed, because a mufti can not provide fatwas with "reckless" without based on knowledge and abilities that can be accounted for by the Qur'an and Hadits. By considering the Prophet Muhammad peace upon him in a Hadits narrated by Imam Abu Daud stated; "A mufti must be an expert or a qualified cleric". Mufti who gives fatwa without adequate knowledge, asks for the sins of those who are entitled to fatwas". This Hadits is a challenge for every mufti to be careful in giving fatwa.

Based on these things, the change in the fatwa is something that can be justified from the perspective of the Islamic law methodology (*ushul al-fiqh*). The difference in legal substance in fatwa 07/2000 and fatwa 105/2016 is a matter that can be justified with a note that the change is based on legal considerations that can be justified. Wahbah al-Zuhaily mentions that there are several things that can affect changes to the law. Changing times, the decay of society and the interests of development are things that can be used as a basis for legal change (Nugroho, 2016). In relation to the change of fatwa,

Mudzhar believes that the formulation of the fatwas is always related to several social environments that are around it. The influential social environment in the formulation of the fatwa includes various social factors both political in nature, namely the tendency to help government policies; culture, which takes the form of a desire to face and answer the challenges of the modern age (Mudzhar, 1993). Based on this reason, the change of guarantee norm in the fatwa 07/2000 is a legal fact that cannot be avoided in accordance with the changing situation and economic conditions that are developing as well as for other reasons as long as it is intended to realize the benefit of the society.

Conclusion

Based on this description, it can be concluded that the mudharabah fatwa stipulated by the Indonesian Council of Ulama is based on the Bayani method (law determination based on the text of the Qur'an and Hadits or reasoning from the text). The legal basis for determining the fatwa 07/2000, is the Qur'an surah al-Nisa verse 29, surah al-Maidah verse 1, and surah al-Baqarah verse 283. While the legal basis for determining the fatwa 105/2016, is Surah an-Nisa verse 29, Surah al-Maidah verse 1, and the Hadits narrated by at-Tirmizi from Aisha. Based on the search for the degree of these Hadits, it was found that the Hadits narrated by Aisyah was a hadith with a weak degree. So it cannot be used as a legal basis in determining the mudharabah fatwa. The inconsistency of guarantee norms on the mudharabah fatwa 07/2000 and fatwa 105/2016 in Indonesia the perspective of Islamic law methodology (Ushul al-fiqh) can be justified to show benefits under the objectives of Sharia. Legal changes or fatwas are a necessity to realize the benefit. Islamic law is always appropriate and can apply at all times, it is interpreted as social change in society that will always be accommodated as the implementation of dynamic Islamic law. Although the Qur'an and Hadits are static, understanding of both can continue even though the times and social conditions of social change.

References

- Abdulganiy, Rasheed. (2020). Deposit in Islamic Banks Under the Principles of Wadi'ah, Qardh, Mudharabah and Wakalah: Concepts and Legal Implications. *Al-Hikmah Journal of Islamic Studies UMYUK*. 8 (1), 32 - 40. Retrieved 10th from <https://hikmahjois.umyu.edu.ng/wp-content/uploads/2021/03/5-DEPOSIT-IN-ISLAMIC-BANKS.pdf>
- Al Jauzi, I. Q. (2000). *I'lam al-Muwaqqi'in 'an Rabb al-Alamin*. Translator F.M.A. Saefullah and K. Sa'diyatulharam. Pustaka Azzam. Jakarta.
- Amin, Ma'ruf. (2008). *Fatwa Dalam Sistem Hukum Islam*. Elsas. Jakarta.
- Barlinti, Y.S. (2010). *Kedudukan Fatwa Dewan Syari'ah Nasional Dalam Sistem Hukum Nasional Indonesia*. Jakarta: Research and Development Agency and Training of the Ministry of Religion.
- Bazmul, M. B.U. Salim. (1995). *Taghayyur al Fatwa*. Daar al Hijrah. Riyadh.
- Djamil, F. (1999). *Filsafat Hukum Islam*. Jakarta: Logos Wacana Ilmu.
- El-Gamal, M. A. (2006). *Islamic Finance, Law, Economics, and Practice*. Cambridge University Press. Cambridge.
- Fawaid, I. (2014). Konsep Pemikiran Ath-Thufi Tentang Masalah Sebagai Metode Istinbath Hukum Islam. *Lisan al-Hal Journal*. 8 (2), 291 - 304. Retrieved 8th August 2021 from <https://journal.ibrahimy.ac.id/index.php/lisanalhal/article/view/138>

- Financial Services Authority. (2021). Sharia Banking Statistics March 2021. Retrieved 8th August 2021 from <https://www.ojk.go.id/en/kanal/perbankan/data-dan-statistik/statistik-perbankan-syariah/Documents/Pages/Sharia-Banking-Statistic---March2021/Sharia%20Banking%20Statistic%20March%202021.pdf>
- Gayo, A.A. (2011). Final Report of Legal Research on The Position of MUI Fatwa in Efforts to Encourage the Implementation of Sharia Economics. Jakarta: Center for Legal Research and Development of the National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights
- Indonesian Council of Ulama. (2021). Fatwa. Retrieved 10th August 2021 from <https://dsnemui.or.id/kategori/fatwa/>
- Juwono, A. (2013). Justice, Certainty, and Expediency in Law. Retrieved 8th August 2021 from <http://afnerjuwono.blogspot.com/2013/07/keadilan-kepastian-dan-kehasilan.html>
- Lahsasna, A. (2018). Fatwa and Its Shariah Methodology in Islamic Finance. *Journal of Fatwa Management and Research*. 2 (1), 133-179. DOI: <https://doi.org/10.33102/jfatwa.vol2no1.121>
- Majlis Penulis Bersyariah. (2012). Takhrij Hadits Tiga Keberkahan. Retrieved 8th August 2021 from <http://majlispenulis.blogspot.co.id/2012/01/takhrij-hadits-tiga-keberkahan.html>
- Mubarak, J. (2014). Perkembangan Fatwa Ekonomi Syariah di Indonesia. Pustaka Bani Quraisy. Bandung.
- Muflihun. (2021). Hadits 2243. Retrieved 8th August 2021 from <https://muflihun.com/ibnmajah/12/2243>
- Mudzhar, M. A. (1993). Fatwa-Fatwa Majelis Ulama Indonesia Sebuah Studi tentang Pemikiran Hukum Islam Indonesia 1975-1988. INIS. Jakarta.
- Nugroho, B. H. (2016). Perubahan Sosial dan Pergeseran Fungsi Fatwa. *al-Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan Journal*. 16 (2), 187 - 200. DOI: <https://doi.org/10.30631/al-risalah.v16i02.307>
- Qardhawi, Y. (2008). Mujibat Taghayyur Al-Fatawa fi 'Ashrina. Dar al Syuruq. Cairo.
- Rusyd, I. (without year). *Bidayah Al Mujtahid wa Nihayah Al Muqtashid*. Semarang: Toha Putera.
- Schacht, J. (1996). *An Introduction to Islamic Law*. University Press. Oxford.
- Syahdeini, S. R. (1999). *Perbankan Islam dan Kedudukannya dalam Tata Hukum Perbankan Indonesia*. PT. Pustaka Grafiti. Jakarta.
- Takim, Liykat. (2021). Islamic Law and the Neoijtihadist Phenomenon. *Religions*. 12 (6), 1 - 10. DOI: <https://dx.doi.org/10.3390/rel12010006>

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).